

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THOMAS MCBRIDE, :  
Plaintiff, : Case No. 2:10-CV-05737  
v. :  
AMERICAN SUBSTANCE ABUSE : HON. EDUARDO C. ROBRENO  
PROFESSIONALS, INC., et al., : FILED ELECTRONICALLY  
Defendant. :

**DEFENDANT NATIONAL DIAGNOSTICS, INC.'S MOTION TO  
DISMISS, OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(d), Defendant National Diagnostics, Inc., hereby moves the Court for an Order dismissing with prejudice Plaintiff Thomas McBride's single-count negligence claim against NDI. Plaintiff's claim fails on multiple levels. First, because Plaintiff cannot establish that NDI owed him a duty of care, an essential element of a Pennsylvania negligence action. Second, because Plaintiff's First Amended Civil Action Complaint, on its face, does not and can not allege that NDI engaged in conduct that could be construed as negligent, *even if* NDI did owe him a duty of care. Accordingly, as set forth more fully in the accompanying memorandum of law, NDI respectfully submits that Plaintiff's negligence claim against NDI should be dismissed with prejudice.<sup>1</sup>

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<sup>1</sup> Should the Court consider materials outside the pleadings in determining this matter, Defendant asks the Court to treat its Motion as one for summary judgment in accordance with Federal Rule Civil Procedure 12(b).

Respectfully submitted,

s/ Robert C. Drake

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Dated: June 13, 2011